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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 REGINALD MILON FIELDS,) Case No. CV 15-03943-DDP (KK)
12)
13 Plaintiff,)
14 v.) ORDER DISMISSING COMPLAINT WITH
15) LEAVE TO AMEND
16 JIM MCDONNEL, et al.,)
17 Defendants.)
18

19 On May 26, 2015, Plaintiff Reginald Milon Fields
20 ("Plaintiff"), a California state inmate proceeding pro se, filed
21 a civil rights complaint pursuant to 42 U.S.C. § 1983
22 ("Complaint"). The Complaint alleges defendants violated
23 Plaintiff's constitutional rights by reading his legal mail. The
24 Court has now screened the Complaint pursuant to 28 U.S.C.
25 § 1915(e)(2). Based upon the reasons set forth below, the Court
26 dismisses the Complaint with leave to amend.

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STANDARD OF REVIEW

The Court's screening of a complaint under 28 U.S.C. § 1915(e)(2) is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010) (internal quotation marks omitted); accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In considering whether a complaint states a claim, a court must accept as true all the factual allegations in it. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept as true, however, "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th Cir. 2012) (finding that district court properly dismissed claim when plaintiff's "conclusory allegations" did not support it).

Although a complaint need not include detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. “A document filed pro se is to be

1 liberally construed, and a pro se complaint, however inartfully
2 pleaded, must be held to less stringent standards than formal
3 pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89,
4 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (citations and
5 internal quotation marks omitted).

7 DISCUSSION

8 I. The Complaint Does Not Unambiguously Identify the Defendants 9 as Required by Rule 10(a) of the Federal Rules of Civil 10 Procedure

11 Rule 10(a) of the Federal Rules of Civil Procedure requires
12 that each defendant be named in the caption of the complaint. A
13 complaint is subject to dismissal if "one cannot determine from
14 the complaint who is being sued, [and] for what relief"
15 McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996).

16 Here, it is unclear whether Plaintiff is suing Sheriff Jim
17 McDonnell ("McDonnell"), along with deputies Parilla, Hinton, and
18 Parra. Unlike defendants Parilla, Hinton, and Parra - who are
19 named in both the caption and body of the complaint - McDonnell is
20 only named in the caption. The court is therefore unable to
21 determine whether Plaintiff intended to name McDonnell as a
22 defendant.

23 If Plaintiff decides to include McDonnell in an amended
24 complaint, he must identify him in both the caption and body of
25 the complaint. Moreover, the Court further advises Plaintiff
26 that McDonnell cannot be named as a defendant in either his
27 official or individual capacity as simply the ultimate supervisor
28 of defendant Parilla, Hinton, and Parra. Rather, "there must be

1 a showing of *personal participation* in the alleged rights
2 deprivation" Jones v. Williams, 297 F.3d 930, 934 (9th
3 Cir. 2002) (emphasis added and internal citation omitted). See
4 also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
5 ("Liability under section 1983 arises only upon a showing of
6 personal participation by the defendant."). Here, Plaintiff
7 alleges no fact suggesting McDonnell was personally involved, or
8 even aware of, the alleged violations committed by defendants
9 Parilla, Hinton, and Parra.

10 **II. Plaintiff Has Failed to State a Claim Against Any Defendant**
11 **in his Official Capacity**

12 Plaintiff sues defendants Hinton, Portillo, and Parra in
13 both their individual and official capacities. For the reasons
14 discussed below, his official capacity claims must be dismissed.

15 The U.S. Supreme Court has held an "official-capacity suit
16 is, in all respects other than name, to be treated as a suit
17 against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105
18 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt,
19 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985);
20 Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991).
21 Such a suit "is not a suit against the official personally, for
22 the real party in interest is the entity." Graham, 473 U.S. at
23 166. Because no respondeat superior liability exists under
24 § 1983, a municipality is liable only for injuries that arise
25 from an official policy or longstanding custom. Monell v. Dep't
26 of Soc. Servs. of City of New York, 436 U.S. 658, 694, 98 S. Ct.
27 2018, 56 L. Ed. 2d 611 (1978); see also City of Canton v. Harris,
28 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). A

1 plaintiff must show "that a [county] employee committed the
2 alleged constitutional violation pursuant to a formal
3 governmental policy or a longstanding practice or custom which
4 constitutes the standard operating procedure of the local
5 governmental entity." Gillette v. Delmore, 979 F.2d 1342, 1346
6 (9th Cir. 1992) (internal quotation marks omitted). In addition,
7 she must show that the policy was "(1) the cause in fact and (2)
8 the proximate cause of the constitutional deprivation." Trevino
9 v. Gates, 99 F.3d 911, 918 (9th Cir. 1996).

10 Here, Plaintiff sues each defendant in his official
11 capacity, but fails to identify any official policy or
12 longstanding custom as the cause of any constitutional
13 deprivation. In fact, the thrust of Plaintiff's complaint is
14 that defendants Portilla, Hinton, and Parilla were acting in
15 violation of the relevant policies regarding inmate legal mail.
16 See e.g. Complaint at 12-13 (alleging defendants' actions were
17 committed in violation "of the law title 15," and "the rules.").
18 Thus, having failed to identify a custom or policy, Plaintiff's
19 official capacity claim against defendants Portilla, Hinton, and
20 Parilla must be dismissed.

21
22 **LEAVE TO FILE FIRST AMENDED COMPLAINT**

23 For the foregoing reasons, the Complaint is subject to
24 dismissal. As the court is unable to determine whether amendment
25 would be futile, leave to amend is granted. See Lucas v. Dep't
26 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

27 Accordingly, **IT IS ORDERED THAT PLAINTIFF RESPOND TO THIS**
28 **ORDER ON OR BEFORE JUNE 21, 2015 BY CHOOSING FROM THE FOLLOWING**

1 OPTIONS:

2 1) Plaintiff may file a First Amended Complaint ("FAC") to
3 attempt to cure the deficiencies discussed above. **The Clerk of**
4 **Court is directed to mail Plaintiff a blank Central District**
5 **civil rights complaint form to use for filing the FAC, which**
6 **plaintiff is encouraged to utilize.**

7 If Plaintiff chooses to file a FAC, Plaintiff must clearly
8 designate on the face of the document that it is the "First
9 Amended Complaint," it must bear the docket number assigned to
10 this case, and it must be retyped or rewritten in its entirety,
11 preferably on the court-approved form. The FAC must be complete
12 in and of itself, without reference to the original complaint or
13 any other pleading, attachment or document.

14 An amended complaint supersedes the preceding complaint.
15 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After
16 amendment, the court will treat all preceding complaints as
17 nonexistent. Id. Because the court grants Plaintiff leave to
18 amend as to all his claims raised here, any claim that was raised
19 in a preceding complaint is waived if it is not raised again in
20 the First Amended Complaint. Lacey v. Maricopa Cnty., 693 F.3d
21 896, 928 (9th Cir. 2012).

22 2) Alternatively, Plaintiff can choose to proceed on his
23 claims against defendant Portilla, Hinton, and Parra in their
24 individual capacities. If Plaintiff chooses this option, he can
25 simply file a Notice of Dismissal dismissing (1) all claims
26 against Sheriff Jim McDonnell; and (2) only the official capacity
27 claims against defendant Portilla, Hinton, and Parra. **The Clerk**
28 **of Court is directed to mail Plaintiff a blank Central District**

1 notice of dismissal form.

2 Plaintiff is admonished that if he fails to timely file a
3 sufficient FAC or fails to respond to this Order, the Court will
4 recommend that this action be dismissed with prejudice on the
5 grounds set forth above and/or for failure to diligently
6 prosecute.

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9 DATED: June 1, 2015


HON. KENLY KIYA KATO
U.S. MAGISTRATE JUDGE